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Attorneys for Defendants Jack Henry & Associates, Inc., a Delaware Corporation dba Profitstars and First National Bank of Central Texas, a Texas Corporation

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

AMBER KRISTI MARSH and STACIE EVANS,
individually and on behalf of a class of similarly
situated persons,

Plaintiff(s).

vs.

ZAAZOOM SOLUTIONS, LLC, a Delaware Limited Liability Company, ZAZA PAY LLC, a Delaware Limited Liability Company dba DISCOUNT WEB MEMBER SITES, LLC, Unlimited Local Savings LLC, WEB DISCOUNT CLUB, WEB CREDIT REPT. CO., MEGA ONLINE CLUB, LLC, and RAISE MONEY FOR ANYTHING; MULTIECOM, LLC, a Colorado Limited Liability Company dba ONLINE DISCOUNT MEMBERSHIP, WEB DISCOUNT COMPANY, and LIBERTY DISCOUNT CLUB; ONLINE RESOURCE CENTER, LLC, a Delaware Limited Liability Company dba Web Coupon Site, USAVE COUPON, and UCLIP, MOE TASSOUDJI, an individual, BILL CUEVAS, an individual, FIRST BANK OF DELAWARE, a Delaware Corporation; FIRST NATIONAL BANK OF CENTRAL TEXAS, a Texas Corporation; SUNFIRST BANK, a Utah Corporation; JACK HENRY & ASSOCIATES, INC., a Delaware Corporation dba PROFITSTARS: AUTOMATED

Case No. 4:11-cv-05226 YGR

**DEFENDANT JACK HENRY &
ASSOCIATES, INC.'S NOTICE OF
MOTION AND MOTION TO DISMISS
THE THIRD AMENDED COMPLAINT**

**(FEDERAL RULES OF CIVIL
PROCEDURE 12(B)(6))**

DATE: June 12, 2012
TIME: 2:00 p.m.
CTRM: One, 4th Floor
JUDGE: Hon. Yvonne Gonzalez Rogers

1 ELECTRONIC CHECKING, INC., a Nevada
 2 Corporation; DATA PROCESSING SYSTEMS,
 3 LLC, a Delaware Limited Liability Company and
 4 DOES 1-10, inclusive,

5 Defendant(s).

6 **NOTICE OF MOTION AND MOTION**

7 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

8 **PLEASE TAKE NOTICE THAT** on June 12, 2012, at 2:00 p.m., or as soon thereafter as
 9 this matter may be heard before the Honorable Yvonne Gonzalez Rogers in Courtroom One of the
 10 above-entitled Court located in the Ronald V. Dellums Federal Building, at 1301 Clay Street, Oakland,
 11 California 94612, Jack Henry & Associates, Inc. will and hereby does move to dismiss the Third
 12 Amended Complaint (the "Complaint") of Plaintiffs AMBER KRISTI MARSH and STACIE EVANS,
 13 individually and on behalf of a class of similarly situated persons ("Plaintiffs"), and each claim for relief
 14 asserted therein, alleged against Jack Henry & Associates, Inc. This Motion is made on the following
 15 grounds:

16 Jack Henry & Associates, Inc. will and hereby does move to dismiss the Complaint and each
 17 claim for relief asserted therein under Rule 12(b)(6) of the Federal Rules of Civil Procedure, on the
 18 grounds that:

19 1. Plaintiffs' Second Claim for Relief for Violation of the Wrongful Prong of California
 20 Business & Professions Code section 17200 against Jack Henry & Associates, Inc. must be dismissed
 21 on the grounds that the Third Amended Complaint fails to plead factual allegations sufficient to constitute
 22 a plausible claim against Jack Henry & Associates, Inc. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct.
 23 1937 (2009).

24 2. Plaintiffs' Fourth Claim for Relief for Violation of the Fraudulent Prong of California
 25 Business & Professions Code section 17200 against Jack Henry & Associates, Inc. must be dismissed
 26 on the grounds that the Third Amended Complaint fails to plead factual allegations sufficient to constitute
 27 a plausible claim against Jack Henry & Associates, Inc. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct.
 28 1937 (2009).

1 3. Plaintiffs' Sixth Claim for Relief for Violation of the Unfair Prong of California Business
2 & Professions Code section 17200 against Jack Henry & Associates, Inc. must be dismissed on the
3 grounds that the Third Amended Complaint fails to plead factual allegations sufficient to constitute a
4 plausible claim against Jack Henry & Associates, Inc. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937
5 (2009).

6 4. Plaintiffs' Seventh Claim for Relief for Conversion against Jack Henry & Associates, Inc.
7 must be dismissed on the grounds that the Third Amended Complaint fails to plead factual allegations
8 sufficient to constitute a plausible claim against Jack Henry & Associates, Inc. *Ashcroft v. Iqbal*, 556
9 U.S. 662, 129 S.Ct. 1937 (2009).

10 5. Plaintiffs' Ninth Claim for Relief for Negligence against Jack Henry & Associates, Inc.
11 must be dismissed on the grounds that the Third Amended Complaint fails to plead factual allegations
12 sufficient to constitute a plausible claim against Jack Henry & Associates, Inc. *Ashcroft v. Iqbal*, 556
13 U.S. 662, 129 S.Ct. 1937 (2009).

14 The Motion is based on this Notice of Motion and Motion of First National Bank of Central
15 Texas, the accompanying Motion to Dismiss the Complaint, the supporting Memorandum of Points and
16 Authorities, all pleadings and papers on file in this case, all matters of which this Court may take judicial
17 notice, and the arguments of counsel.

18 Respectfully submitted,

19 DATED: May 1st, 2012

GRAY • DUFFY, LLP

20 By: /s/ Lyn D. Tadlock

21 RICHARD M. WILLIAMS
22 LYN D. TADLOCK
23 Attorneys for Defendant First National Bank of
24 Central Texas, a Texas Corporation